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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,852	01/25/2001	John Edward Wiese	WIRE-01007US0 DEL	5501
7590 04/01/2005			EXAMINER	
FLEHR HOHBACH TEST ALBRITTON & HERBERT LLP FOUR EMBARCADERO CENTER, SUITE 3400 SAN FRANCISCO, CA 94111-4187			SHEW, JOHN	
			ART UNIT	PAPER NUMBER
			2664	

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/769,852

Applicant(s)

WIESE ET AL.

Examiner

John L Shew

Art Unit

2664

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/29/2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-9 and 20-23 is/are allowed.
- 6) ☒ Claim(s) 1-3, 7 and 13-15 is/are rejected.
- 7) ☒ Claim(s) 4-6, 10-12 and 16-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-3, 7 and 13-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over copending Application No. 09/769848.

Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15 dependent on claim 1 of

copending Application No. 09/769848 amended 11/29/2004. Application 09/769848 claims a communications system for servicing customers (Application 09/769848 Claim 15 lines 1-2) referenced by the communications system of Claim 1 operating for servicing said customer premises, connected to access points (Application 09/769848 Claim 15 line 2-3) referenced by where said customer premises are connected to access points, and using an established backhaul transport to an office (Application 09/769848 Claim 15 lines 3-4) referenced by use said established backhaul transport to communicate with said office, comprising one or more remote digital subscriber line access multiplexers (Application 09/769848 Claim 15 lines 4-6) referenced by said first connection means includes one or more remote digital subscriber line access multiplexers, placed at locations away from said office to be close to said customers (Applications 09/769848 Claim 1 lines 13-14) ATM nodes located away from said office to be close to respective ones of said customer premises, connecting means for connecting said access multiplexers to said access points (Application 09/769848 Claim 15 lines 7-8) referenced by access connecting means for connecting said access multiplexers to said access points, an alternate backhaul transport in parallel with said established backhaul transport for connecting said access multiplexers to provide broadband services to said customers (Application 09/769848 lines 11-12) referenced by said ATM network provides an alternate backhaul transport for communications between said points of presence and said customer premises in parallel with an established backhaul transport via an office and (Application 09/769848 Claim 15 lines 10-12) referenced by said ATM network forms said alternate backhaul transport for

connecting said access multiplexers with said points of presence to provide broadband services to said customer premises.

Claim 1 does not claim a connection means for connecting a plurality of ATM nodes to customer premises and points of presence.

Application 09/769844 Claim 1 claims a plurality of ATM nodes with first connection means for connecting ATM nodes to customer premises second connection means for connecting ATM nodes to points of presence and transports connecting ATM nodes in an ATM network having a mesh architecture.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the Claim 1 connecting means to for connecting access multiplexers to an alternate backhaul transport for broadband services encompasses ATM networks inclusive of connection means for customer premises, connection means for points of presence and control means associated with the connections.

Claims 2 and 3 are unpatentable over claim 16 of copending Application No. 09/769848 amended 11/29/2004. Application No. 09/769848 claims access multiplexers are all-weather hardened for outdoor installation and are located in utility-pole mountable enclosures (Application No. 09/769848 Claim 16 lines 1-2) referenced by access multiplexers are environmentally-hardened in all-weather, pole-mountable enclosures.

Claim 7 is unpatentable over claim 15 dependent on claim 1 of copending Application No. 09/769848 amended 11/29/2004.

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Application No. 09/769848 claims alternate backhaul transport includes a network of ATM switches (Applications 09/769848 Claim 1 lines 11-12) referenced by wherein said ATM network provides an alternate backhaul transport for communications between said points of presence and said customer premises.

Claims 13, 14 and 15 are unpatentable over claim 17 of copending Application No. 09/769848 amended 11/29/2004. Application No. 09/769848 claims said office is an ILEC central office, said alternate backhaul transport connects to a CLEC office, said alternate backhaul transport connects to other networks (Application No. 09/769848 Claim 17 lines 1-3) referenced by said office is an ILEC 2 central office and said alternate backhaul transport connects to said ILEC central office, to a CLEC office and to other networks.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Allowable Subject Matter***

1. Claims 8-9, 20-23 are allowed.

Claims 4-6, 10-12, 16-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L Shew whose telephone number is 571-272-3137. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 571-272-3134. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

js

A handwritten signature in black ink, appearing to read 'J. Shew', with a long horizontal line extending to the right.